IN THE DRAWING

Replacement sheets for FIGS. 4, 6, 7, 8 and 9 are attached to correct the drawing in accord with the Examiner's objections.

A complete copy of all application claims (not including cancelled claims) is presented beginning on page 6.

REMARKS

1. Applicant acknowledges the withdrawal of claims 18-22 accordingly, election was made without traverse in the reply of July 24, 2006.

2. Cancelled process claims 18-22 have been rewritten as claims 41-46(new, withdrawn) and reflect the limitations of the product claims in order for applicant to maintain the right of rejoinder. No new matter has been added.

3. With regard to the withdrawal, by the Examiner, of claims 33; 37-40, as allegedly being directed to a non-elected invention, the Examiner takes the position that claim 33 is distinct from claim 25 because there is a bulbous portion on the top of the tension member whereas claim 25 states that the top end portion extends freely through the bond beam. The distinction that the Examiner makes does not, in fact, exist. The elongated tension member and/or bulbous member must be free of the bond beam, otherwise no tensioning thereof could exist.

As discussed on page 5 of the specification and illustrated in FIGS. 1-3, there is no distinction between (1) having the upper end of the tensioning member extending freely through the bond beam and (2) the existence of a bulbous element as part of the upper end portion of the tension member. "The upper end portion 20 of the element 18 extends through and above the bond beam 11." p. 5, 4-5 lines from end. The upper end portion of the element 18 extends through a sleeve located through the bond beam.

The Examiner takes the position that the bulbous portion in claim 33 requires the claim be read onto FIG. 8, which is described as being a combination of FIGS. 6 and 9. In each of FIGS. 3, 6 and 9, the upper end portion of the tension member includes a bulbous element 24 or 58. In each embodiment, the upper end portion extends freely through the bond beam 11. This is necessary because the tension member must be movable vertically in order to create the compression required by tightening the adjustment apparatus. Accordingly, claim 33 simply further defines the invention disclosed in claim 25 and is not only readable on FIG. 8, as erroneously set forth by the Examiner.

Other issues to consider include the following:

a. claim 33, which depends on claim 25, recites:

"a pair of bulbous elements attached firmly to said opposite end portions..."

"said upper bulbous element being disposed below a free threaded end of said one end portion,"

"said free threaded end passing through a passage in said continuous masonry beam..."

b. claim 31, which depends on claim 25, recites:

"a bulbous element attached firmly to said opposite end portion..."

c. The use of a "bulbous element" at the upper end portion does not prevent the upper end from extending freely through the masonry beam. The bulbous element is firmly attached only to the elongated tension member and not to the bond beam, as clearly described and claimed.

The present Office Action is the first mention of the specification describing the invention in terms of species. The Office Action of 4/20/06 was directed towards a provisional election of Claims 1-17; 23-24 in the context of product and process. No distinction was made between three alleged species directed towards FIGS. 1-5; 6-7; and 9-10. The claims as originally presented were directed to all of the structures of the presented drawings. Moreover, there was no election requirement regarding the two-story building which was included in original claims 23 and 24. Thus, the Examiner had an opportunity to require election of species in the first Office Action and failed to do so. For the Examiner to now state that "applicant has received an action on the merits for the originally presented invention of species A" is not believed to be correct. Accordingly, the finality of this Office Action is patently premature and should be withdrawn and the Examiner did not address this issue in the advisory action of02/01/2007.

Applicant believes that the present action should not have been a final rejection and the Examiner should withdraw same.

In response to the election of species, applicant provisionally elects species B. The generic claims and specific claims are set forth at the end of remarks paragraph 4.

4-5. With respect to the allegedly distinct species identified as species A; species B; and species C, it is important to understand the specific structural details disclosed in the groups of figures.

- Species A, identified in FIGS. 1-5, shows an upper end portion 35 secured via a nut 37, washer 38 connected to upper stud 21 (FIG. 4). Alternately, upper stud 44 is secured via nut 45 and washer 43 to mount upper end portion 42 (FIG.5). Elongated member 18 may be either a wire rope (FIG. 2); a rebar 28 (FIG. 4); or a rod or bolt 40 (FIG. 5).
- Species B, identified in FIGS. 6, 7 has an upper end 48 including an upper stud 21 through plate 50 and nut 26 threaded onto upper stud 21 and resting on plate 50 (with flanges 51) in lieu of washers 38, 43 to provide sufficient width for flanges 51 over the upper edges 55 of bond beam 11. See p. 6, paragraph describing FIG. 6.
- Species C, identified in FIGS. 9, 10, includes an upper portion 56 having a threaded stud portion 59 attached via washer 61 and nut 62 atop plate or plates 60.

Each of the species provides a structure for the connection of the upper end of the tension member in a manner to allow for the creation of the desired compression force. The use of subtending hooks carrying horizontal rebars in FIGS. 6, 7 do not constitute a departure from the basic construction illustrated.

a. The Examiner seems to take the view that the modifications of FIG. 4 shown in FIG. 6 result in a distinct invention. The modifications include:

1) Plate 50 instead of washer 25;
2) Flanges on plate 50; and
3) Hook members carrying rebars 54.

b. In addition, from page 6 discussing FIG. 6: "The apparatus is substantially identical to the upper end portion 20 illustrated in FIG. 3 with additional features." This is not believed to be a distinct invention.

c. On page 7 it is stated that FIGS. 3-7 may be used in the FIG. 8 utilization, but that FIG. 6 is preferred.

Applicant elects species A with traverse as set forth above, in response to the Examiner's position.

Selection of Claims

Applicant believes that claims 14, 15, 16, 25, 26, 27, 28, 30, 31, 32, 34, 35 and 36 are generic. Applicant believes that additional claim 33 is directed to the elected species A.

6. The drawings have been corrected in accord with the Examiner's objections. Applicant does not agree with the objection to FIG. 7. The drawing has been made darker to be clear. Replacement sheets are submitted herewith.

7. With respect to the rejection of claims 14-16 as allegedly being anticipated by Greenberg '796, now U.S. Patent 6,632,048; Greenberg '048 does not disclose a continuous masonry bond beam 102 and the Examiner's statement otherwise is contrary to well accepted building standards.. The top course 102 has individual concrete blocks filled with grout and a flat upper surface created by blocks and grout 110. Furthermore, the top course 102 is even with the grade level 112 of adjacent soil. Col. 7, lines 31-33. The structure discussed is a retaining wall and not a building wall.

The applicant's disclosure provides a continuous bond beam formed by poured concrete and extends around and along all of the walls of the building and ties all of the bond beam and walls to the concrete foundation which includes a plurality of vertically disposed bores therein, a feature not disclosed in the reference.

Claim 14 as currently amended recites that "walls...form a building space above said foundation" and "another end portion extending freely through and above said concrete bond beam" thus distinguishing the present invention from Greenberg '048 wherein nut 33 and threaded end 21 are embedded in grout 110, col. 7, line 29 and do not extend through and above the alleged bond beam 102, which factually is not a continuous a bond beam. The Examiner maintains that member 20 of Greenberg '048 extends "through" the bond beam insofar as it is within the confines of the bond beam side walls. Applicant believes that it is more accurate to say that threaded end 21 extends "into" the alleged bond beam where it is permanently buried in grout.

With respect to Claims 15 and 16, applicant disagrees that threaded end 21 extends "through" passageway 106. If anything, the end 21 extends into the passageway 106. Moreover, the examiner takes the position that elements 124, 126, 128 are part of threaded stud 21, which is referenced as part of the "upper threaded stud" in the discussion of Claim 16 on page 8, even if the Examiner is correct, the “upper end” is embedded in the upper wall and does not “freely” pass through the alleged bond beam.

Accordingly, applicant does believe that claims 14-16 as currently amended are not anticipated by Greenberg ‘796/’048.

8. With respect to claims 25-27, 29, 34 and 36 as allegedly being obvious in light on Greenberg ‘796/’048 and Ramsey, applicant repeats the arguments presented hereinabove, and of record particularly in paragraph 7. Greenberg does not disclose a masonry wall but only a retaining wall. Moreover, the elongate members do not extend “freely” through the alleged bond beam of Greenberg. Threaded end stub 21 does not extend “freely through” and “above” the course wall 102. Indeed, stud 21 is secured at a plate below the wall 102.

In addition, it is important to discuss the rods 20 and the placement of them in the concrete footer 15. The rods 20 are placed in the footer 15 while the concrete is still unset. The lower portion 25 includes a portion that extends at a right angle to the upper shaft portion. Each of the concrete blocks must be lifted, lowered over the rods and somehow the mason must grout the blocks, etc. Can one imagine doing this for a building made from partially hollow concrete blocks of the type shown in Greenberg and the instant application? This would be a very difficult, if not impossible, task to build a concrete block house or store in which the 1st floor would be 8-10 feet off of the foundation, for example, by using Greenberg’s construction.

In the present disclosure, the elongated members extend from the foundation to the top of and freely through the continuous masonry wall and the continuous concrete bond beam tying all the walls together and compressing all the walls between the bond beam and the foundation. Neither Ramsey nor Greenberg contemplate such a construction. Applicant concedes that continuous concrete bond beams in concrete block constructions of buildings (homes and stores) is not new and is well known to those having skill in the art. However Ramsey is not believed to be applicable to the instant invention as disclosed and claimed.

With regard to Ramsey, it is important to note that the present invention places the bond beam 11 on top of the wall 12 and provides the tension members passing freely through the beam after it has set and cured to allow for adjustment of the tensioning force as the last step in the overall process. The cited references do not teach or suggest placing a free end of an elongated member above the bond beam to allow for tensioning after construction of the wall and bond beam is completed. The upper end portion of the elongated member remains freely positioned through the bond beam and could be adjusted at a later time as necessary.

Applicant does not believe that the Ramsey reference is appropriate. Ramsey is about the placement of bonding courses and bonding of intersecting walls as a matter of general building code requirements for masonry. The present invention includes the necessary continuous concrete bond beam and tensions same and the entire walls of a building structure to the foundation.

With respect to the Examiner's discussion of Claims 26, 27, 29, 34 and 36, Greenberg discloses a retaining wall without a continuous bond beam, particularly a continuous concrete bond beam, and regardless of whether the elongated member is a threaded rod and/or is rigid and substantially non-stretchable, the upper end is located and embedded in grout or concrete whereas in the present disclosure the upper end is readily accessible and passes freely through the continuous concrete bond beam.

Applicant believes that the Greenberg and Ramsey references do not teach or suggest the present invention in any appropriate combination.

9. Applicant does not believe that claims 28 and 30-32 are obvious in light of Greenberg, Ramsey and Crumley '843. There is no suggestion that Greenberg and Ramsey contemplate, in any way, the installation of the elongated members after the foundation has been poured and hardened. Indeed, the foundation is inaccessible after the Greenberg wall is built. Moreover, given the need for the right angle lower portion, it would make no sense to later drill any opening in the foundation for the right angle rod of Greenberg.

Crumley, on the other hand, employs a straight lower end and contemplates fastening the tension members after the foundation and framing is complete and also, retrofitting the tension members after the building is complete. Furthermore, Crumley is directed towards a tie-down system that is independent of the structural wall sheathing as an integral part of the system, col. 1, lines 60-64. The prior art does not teach or suggest the present invention in any appropriate combination. Crumley is directed to a wooden structure and does not include a continuous concrete bond beam or any other masonry structure. Furthermore, Crumley drills through the wooden bottom plate as well as into the foundation. This is completely not akin to anything in Greenberg where the masonry wall covers the foundation therebeneath and there is no teaching that there would be any need to somehow drill holes in the foundation after the wall of Greenberg is built.

Greenberg only contemplates the pre-positioning of the bent rods into the foundation prior to pouring thereof or inserting same prior to setting of the concrete. As such, one having ordinary sill in the art would not even consider the construction details of a frame building such as Crumley. Particularly, this is so because Greenberg does not relate to a building with an occupant space formed by tall upstanding masonry walls. The short walls, three concrete blocks in height, would permit the construction envisioned by Greenberg, but for a building with 8 feet high walls, Greenberg's construction would be completely unusable, as would be obvious to one skilled in the art. The embedding of the nuts in the grout of Greenberg and/or making them inaccessible are contrary to the teachings of this invention.

Claims 31 and 32 are not taught or suggested by the cited references in any appropriate combination.

10. Claim 35 is not believed to be obvious in light of Greenberg, Ramsey and Herbst '122 for the reason that the use of rebar in Herbst is for an entirely different purpose. Herbst is directed towards an anchoring device whereas the present invention is directed towards a rebar used to freely pass through a continuous masonry bond beam, which as discussed hereinabove is not taught or suggested by either Greenberg or Ramsey. Nor do Greenberg and Ramsey include drilling a borehole in the foundation as is the case with the present invention.

11. Applicant repeats the arguments made in the response of 7/24/06.

Accordingly, applicant believes that claims 14 (currently amended), 15-16; 25 (currently amended), 26-27; 28 (currently amended), 29-38, 39 (currently amended), 40 (currently amended), 41-45 are not anticipated by Greenberg '796/'048 and are not taught or suggested by Greenberg, Ramsey, Crumley '843 or Herbst '122 in any appropriate combination.

Furthermore, no action has been provided on the species B, as believed appropriate.

A telephone interview is requested to resolve any remaining issue.

Respectfully submitted,

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